Date Filed	#	Docket Text
11/20/2000	45	Judgment plaintiffs motion to remand (Doc. 12) and *Plaintiffs supplemental* motion to remand (Doc. 18) denied; Plaintiffs motion to amend the complaint (Doc. 25) granted. (Katz, David) (Entered: 11/20/2000)
		* * *
02/12/2001	51	Motion to dismiss case *Motion to Dismiss the Complaint Pursuant to Rule 12(B)(6)* filed by John T Landwehr of Eastman & Smith on behalf of DaimlerChrysler, Inc..(Landwehr, John) (*Entered*: 02/12/2001)
02/12/2001	52	Motion to dismiss case filed by Truman A. Greenwood, Barbara E. Herring, Robert C. Maier, Samuel J. Nugent, Theodore M Rowen, Sharon A. Jennings of Spengler Nathanson P.L.L. on behalf of Joseph T. Deters, Carleton S. Finkbeiner, C. Lee Johnson, State of Ohio, Toledo Public School District, Toledo, City of, Washington Local School District, Thomas M. Zaino. (Jennings, Sharon) (Entered: 02/12/2001)
		* * *
04/03/2001	55	Response in *Opposition to All Defendants' Motions to Dismiss Re Inapplicability of Commerce Clause* filed by Terry J. Lodge on *behalf* of all plaintiffs. (Related motion(s) 51, 52) (Other related filing(s) 51, 52) (Lodge, Terry) (Entered: 04/03/2001)

Date Filed	#	Docket Text
04/03/2001	56	Opposition to *All Defendants' Motions to Dismiss (Re Eleventh Amendment Immunity and Equal Protection)* filed by Terry J. Lodge on behalf of all plaintiffs. (Related motion(s) 51, 52) (Other related filing(s)51, 52) (Lodge, Terry) (Entered: 04/03/2001)
04/04/2001	57	Opposition Memorandum to *All Defendants' Motions to Dismiss Re Inapplicability of Commerce Clause* filed by Terry J. Lodge on *behalf* of all plaintiffs. (Related motion(s) 51, 52) (Other related filing(s) 51, 52) (Lodge, Terry) (Entered: 04/04/2001)
04/24/2001	58	Reply Memorandum of *Law in Support of Defendant Daimler Chrysler Corporation's Motion to Dismiss the Complaint Pursuant to Rule 12(B)(6)* filed by DaimlerChrysler, Inc.. (Related motion(s) 51) (Landwehr, John) Modified on 4/24/2001 (N, D). INCOMPLETE DOCUMENT, TO BE REFILED (Entered: 04/24/2001)
04/24/2001	59	Reply *Memorandum of Law in Support of Defendant Daimler Chrysler Corporation's Motion to Dismiss the Complaint Pursuant to Rule 12(B)(6)* filed by DaimlerChrysler, Inc.. (Related motion(s) 51) (Landwehr, John) (Entered: 04/24/2001)

Date Filed	#	Docket Text
04/24/2001	60	Reply *in Support of Defendants' Motion to Dismiss* filed by Joseph T. Deters, Carleton S. Finkbeiner, C. Lee Johnson, State of Ohio, Toledo Public School District, Toledo, City of, Washington Local School District, Thomas M. Zaino. (Related motion(s) 52) (Other related filing(s) 57, 56) (Jennings, Sharon) (Entered: 04/24/2001)
08/01/2001	61	MEMORANDUM OPINION granting defendants' motions to dismiss case. (Related Doc # 51) (Related *Doc* # 52) (Katz, David) Modified on 8/3/2001 (N, D). (Entered: 08/01/2001)
08/01/2001	62	JUDGMENT ENTRY. Defendants' motions to dismiss granted. Counts II& V dismissed without *prejudice* as to Commissioner of Ohio Department of Taxation, Director of Department of Development of State of Ohio and State of Ohio; Counts II & V dismissed with prejudice as to Ohio State Treasurer, Mayor of Toledo, City of Toledo, Toledo Public School District, Washington Local School District & Daimler Chrysler, Counts I, III, IV dismissed with prejudice as to all Defendants. (Katz, David) (Entered: 08/01/2001)
08/30/2001	63	Notice of Appeal regarding orders filed 8/01/01 61 and 62, filed by all plaintiffs. Filing fee paid; receipt number 312159 (M, C). Modified on 9/24/2004 (H, S P). (Entered: 09/06/2001)

Date Filed	#	Docket Text
		* * *
09/13/2004	65	Information copy of opinion from the USCA for the Sixth Circuit: *Reversing* that portion of the District Court's judgment upholding as constitutional the investment tax credit provision of Ohio Rev. Code Ann. 5733.33 and we enjoin its enforcement. Affirming the remaining portions of the District Court's judgment as to 63 Notice of Appeal (USCA# 01-3960). This is not a mandate order. Circuit Judges: Siler, Daughtrey and Cole. Date issued by USCA 9/2/04 (Attachments: #(1) Judgment) (H, S P) (Entered: 09/16/2004)
10/22/2004	66	Information copy of Amended Opinion from the USCA for the Sixth Circuit: Reversing in part and Affirming in party the judgment of *the District* Court as to 63 Notice of Appeal (USCA# 01-3960). This is not a mandate order. Circuit Judges: Siler, Daughtrey and Cole. Date issued by USCA 10/19/04 (Related document 65) (Attachments: # I Amended Judgment) (H, S P) (Entered: 10/22/2004)

Date Filed	#	Docket Text
02/02/2005	67	Appeal Remark from the 6th Circuit Court of Appeals: The mandate is stayed to allow time to file a petition for a writ of certiorari in the Supreme Court re 63 Notice of Appeal (USCA# 01-3960). Circuit Judges: Siler, Daughtrey and Cole. Date issued by USCA 1/31/05 (H, SP) (Entered: 02/03/2005)

* * *

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Charlotte I. Cuno 5048 Tappan Toledo, OH 43612 and Mary L. Branwen 6608 Dorr Street Toledo, OH 43615 and Judith A. Pfaff P.O. Box 27 Toledo, OH 43697-0027 and Kenneth P. Pfaff P.O. Box 27 Toledo, OH 43697-0027 and Phoenix Earth Food Co-op, Inc. 1447 Sylvania Ave. Toledo, OH 43612 and Robert Scott Brundage 2532 Glenwood Ave. Toledo, OH 43610 and Herbert H. Raschke 4807 291st St. Toledo, OH 43611-2127 and Carol A. Raschke 4807 291st St. Toledo, OH 43611-2127 and	)	Case No. CI0200062004 Judge Skow **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
	)	Terry J. Lodge (0029271) 316 N. Michigan St. Ste. 520 Toledo, OH 43624-1627 (419) 255-7552 Fax: (419) 255-8582 Peter D. Enrich, Esq. Northeastern University School of Law 400 Huntington Ave. Boston, MA 02115 (617) 373-5094 Counsel for Plaintiffs

Hutton Pharmacy, Inc.
2101 Dorr St.)
Toledo, OH 43607
and)
Duane M. Arquette
331 Langdon St.)
Toledo, OH 43609
and)
Kim's Auto and Truck
Service, Inc.)
3708 Stickney Ave.
Toledo, OH 43612)
and
Mary Ebright)
2062 Keen St.
Toledo, OH 43611)
and
Helen Czapczynski)
2107 Keen St.
Toledo, OH 43611)
and
Julie Coyle)
2554 Westbrook
Toledo, OH 43613)
and
Jean E. Kaczmarek)
4441 Helmond Ct.
Toledo, OH 43611)
and
Kathleen Hawkins)
953 Dixie Ave.
Erie, MI 48133)
and
Carrie Hawkins)
953 Dixie Ave.
Erie, MI 48133)
and

Rick Van Landingham
1312 Paxton St.
Toledo, OH 43608,

Plaintiffs,

-vs-

DaimlerChrysler, Inc.
Attn: Frederick Hoffman
Government Affairs
1000 Chrysler Drive
CIMS 485-09-82
Auburn Hills, MI
48326-2766
and
Terry L. Glazer
President of the Board
Toledo Public School
District
420 East Manhattan Blvd.
Toledo, OH 43608
and
Toledo Public School
District
420 East Manhattan Blvd.
Toledo, OH 43608
and
David Hunter
President of the Board
Washington Local School
District
3505 W. Lincolnshire Blvd.
Toledo, OH 43606
and

Washington Local School
District)
3505 W. Lincolnshire Blvd.
Toledo, OH 43606)
and
Carleton Finkbeiner, Mayor)
City of Toledo
One Government Center,)
22nd Floor
Toledo, OH 43604)
and
City of Toledo)
One Government Center,
22nd Floor)
Toledo, OH 43604
and)
Joseph T. Deters
Treasure of State)
30 East Broad St.
Columbus, OH 43266)
and
Thomas M. Zaino)
Tax Commissioner
Ohio Department of)
Taxation
30 East Broad St.)
P.O. Box 530
Columbus, OH 43266-0530)
and
C. Lee Johnson, Director)
Department of
Development)
State of Ohio
77 S. High St.)
P.O. Box 1001
Columbus, Ohio 43216-1001)
and

State of Ohio)
c/o Robert Taft,
Governor)
Statehouse
Columbus, OH 43215,)

Defendants.)

INTRODUCTION

1. This lawsuit is brought to challenge the legality of certain tax benefits granted a private sector industrial corporation to induce it to keep some of its business operations in Toledo, Lucas County, Ohio.

2. Plaintiffs Charlotte I. Cuno, Mary L. Branwen, Judith A. Pfaff, Kenneth P. Pfaff, Robert Scott Brundage, Herbert H. Raschke, Carol A. Raschke, Duane M. Arquette, Mary Ebright, Helen Czapczynski, Julie Coyle, Jean E. Kaczmarek and Rick Van Landingham are all residents of the City of Toledo, Lucas County, Ohio and as such are property owners and/or renters and pay property, sales and/or income taxes to the City of Toledo, Lucas County and the State of Ohio. Plaintiffs Mary Ebright, Helen Czapczynski, and Jean E. Kaczmarek all formerly resided within the development zone of DaimlerChrysler, Inc.'s Jeep plant project which is described further herein, and all three of said Plaintiffs were displaced from the homes they owned and/or resided in as a result of the use, or threatened use, of the eminent domain power by the City of Toledo to obtain title to their land in order to convey it to DaimlerChrysler Corporation for the Jeep plant project.

3. Plaintiffs Kathleen Hawkins and Carrie Hawkins (the "Michigan Plaintiffs") are residents of the State of Michigan, and they pay various taxes to the State of Michigan. Plaintiff Kathleen Hawkins owns residential real property in Michigan and pays property taxes thereon.

4. Plaintiff Phoenix Earth Food Co-op, Inc. is a not-for-profit corporation under the laws of the State of Ohio the purpose of which is to operate a food sales cooperative in the City of Toledo. The Co-op pays various taxes to the City of Toledo, County of Lucas and State of Ohio.

5. Plaintiff Hutton Pharmacy, Inc. is a for-profit corporation under the laws of the State of Ohio which operates a drug store and pharmacy business in the City of Toledo and as such, pays various taxes to the City of Toledo, County of Lucas and State of Ohio.

6. Plaintiff Kim's Auto and Truck Service, Inc. is a for-profit corporation under the laws of the State of Ohio which operates an automotive mechanical repair business in the City of Toledo and as such, pays various taxes to the City of Toledo, County of Lucas and State of Ohio. Said Plaintiff's business is, as of the time of filing of this Complaint, located within the boundaries of the Jeep plant project. This Plaintiff's real estate is currently facing the invocation, or threatened invocation, of the power of eminent domain by the City of Toledo in order for the land on which it is located at 3708 Stickney Avenue, Toledo to be conveyed to Defendant DaimlerChrysler, Inc. as part of the Jeep plant project. The Plaintiffs enumerated in ¶¶ 2, 4, 5 and 6 herein are collectively referred to as the "Ohio Plaintiffs."

7. Defendant DaimlerChrysler, Inc. is a for-profit corporation, the North American headquarters of which is located in Auburn Hills, Michigan, which has operated a manufacturing plant on Stickney Avenue in Toledo for the construction of Jeep motor vehicles or parts for same for many years. The Stickney Avenue plant is the focus of physical expansion and technology upgrading in order for the manufacture of motor vehicles to continue into the future. The Stickney Avenue plant expansion will cost an estimated $1,200,000,000. The City of Toledo, Toledo Public Schools, Washington Local Schools and the State of Ohio have amassed a package of

governmental incentives, currently totalling at least $281,000,000, which have been granted, accorded, guaranteed, provided or otherwise made available to DaimlerChrysler as inducements for the expansion and continued operation of the Stickney Avenue Jeep plant.

8. Defendants Toledo Public Schools and Washington Local Schools are public school districts which are capable of being sued. Defendant Terry L. Glazer is President of the Toledo Public School Board and is being sued in his official capacity. Defendant David Hunter is President of the Washington Local Public School Board and is being sued in his official capacity. Portions of the Stickney Avenue Jeep plant are located in the two school districts, and the school districts ordinarily receive property tax revenues based upon their respective shares of the real and personal property at the plant. Defendants Presidents of the boards of the Defendant school districts have authorized the granting of tax incentives to DaimlerChrysler as inducements to expand the Stickney Avenue plant in Toledo.

9. Defendant Carleton Finkbeiner is Mayor of the City of Toledo, Ohio and in such capacity has authorized the granting of tax incentives related to the Toledo Jeep plant to Defendant DaimlerChrysler. Defendant City of Toledo is a municipal general purpose government under the laws of the State of Ohio, and is capable of being sued, and is being sued, for granting said incentives to Defendant DaimlerChrysler.

10. Defendant Joseph T. Deters is Treasurer of the State of Ohio and is charged with the collection of tangible personal property tax and corporate franchise tax revenues.

11. Defendant Thomas M. Zaino is Commissioner of the Ohio Department of Taxation and is responsible for enforcement of state tax codes, including those for the tangible personal property tax and corporate franchise tax.

12. Defendant C. Lee Johnson is the Director of the Ohio Department of Development and is responsible for the necessary certification of enterprise zones to allow the granting of tangible personal property tax abatement.

13. Defendant State of Ohio is a general purpose state government which is capable of being sued, and which is being sued, for granting the tax incentives and certifications of which complaint is made.

14. Mayor Finkbeiner and DaimlerChrysler entered, on November 12, 1998, into Exhibit A, an "Agreement for the Development of Stickney Assembly Plant" ("Development Agreement"). A copy of the Development Agreement is attached hereto and incorporated fully herein by reference.

Count 1

(Unconstitutionality of Property Tax Exemption)

15. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 13.

16. Ohio Revised Code § 5709.62(C) (1) (copy attached as Exh. B) empowers the legislative authority of an Ohio municipal corporation to enter into an agreement with a business enterprise "under which the enterprise agrees to establish, expand, renovate, or occupy a facility and hire new employees, or preserve employment opportunities for existing employees" within a designated "enterprise zone," in return for which the municipal corporation grants the enterprise an exemption for up to ten years of "a specified portion, up to seventy-five percent, of the assessed value of tangible personal property first used in business at the project site as a result of the agreement." Subsection (D) (1) of § 5709.62 authorizes the exemption to exceed seventy-five percent (75%) of the assessed value, if the board of education of the affected school district approves the higher percentage.

17. Pursuant to O.R.C. § 5709.631 (copy attached as Exh. C), any enterprise entering into such an agreement un-

der § 5709.62 must specify in the agreement the investments to be made by the enterprise at the facility and estimate the number of employee positions to be created and the number to be retained by the enterprise due to the project, and the agreement must specify that the municipality may terminate the exemptions if the enterprise materially fails to fulfill its obligations under the agreement.

18. On or about November 12, 1998, the City of Toledo, acting through Defendant Finkbeiner, and the then-Chrysler Corporation (since renamed "DaimlerChrysler") entered into the aforesaid Development Agreement pursuant to the requirements of Ohio Revised Code §§ 5709.62 and 5709.631. The Agreement has the purpose of subsidizing DaimlerChrysler's plans to undertake improvements to its Jeep Parkway Assembly Plant, also located in Toledo, and expansion and construction of the Stickney Avenue plant (jointly referred to as "the Jeep plant project"). In the Agreement, the City provides DaimlerChrysler with a variety of economic incentives in order to induce the company to undertake the Jeep plant project.

19. In paragraph 5.01 of the Development Agreement, DaimlerChrysler covenants that its investment in the Jeep plant project will approximate $1.2 billion and that combined employment at the two Toledo Jeep plants will total about 4900 DaimlerChrysler employees.

20. In paragraph 4.04 of the Development Agreement, the City of Toledo agrees to provide a one hundred percent (100%) exemption from personal property tax for a period of ten (10) years for personal property used by DaimlerChrysler at the Jeep Plant project. This provision of the Agreement is expressly made subject to an additional agreement to be entered into between the City and DaimlerChrysler, the form of which is incorporated in Exhibit 4.04 appended to the Agreement. Exhibit 4.04 conditions the exemption upon DaimlerChrysler's materially fulfilling its covenants as to its

investments in the project and its employment at the façility. Also, both of Defendant school districts have entered into agreements with DaimlerChrysler whereby they consent to the grant of a one hundred percent (100%) exemption in return for DaimlerChrysler's agreement to make specified payments to said school districts.

21. By means of said § 5709.62 and the Development Agreement, the City of Toledo, Toledo Public Schools and Washington Local Schools are providing DaimlerChrysler with a subsidy of millions of dollars in foregone tax revenues in order to induce DaimlerChrysler to continue to locate its plant facilities in Toledo.

22. The Ohio Plaintiffs are injured by this scheme in that the subsidy has the effect of reducing the funds available for the operation of the Toledo Public Schools, Washington Local Schools and City of Toledo, to which the Ohio Plaintiffs contribute through their tax payments. The tax exemption to DaimlerChrysler thereby diminishes the funds available to these governmental bodies for lawful uses and shifts to the Ohio Plaintiffs a disproportionate burden of supporting these governmental functions.

23. One Ohio Plaintiff, Kim's Auto and Truck Service, Inc., is a small business whose real property on Stickney Avenue in Toledo as of the filing of this Complaint is slated to be condemned by the City of Toledo, to be taken and conveyed to DaimlerChrysler in aid of the Jeep plant project. Without the aforesaid tax exemption, the Stickney Avenue Jeep plant would not have been expanded, causing Kim's Auto to be slated for displacement. Kim's will be injured by the displacement in that the business has in the past and will into the future experience temporary shutdowns, lack of customer access from public thoroughfares, loss of current location as a factor in customer decisions, temporary and/or permanent loss of business visibility, loss of income from temporary closure due to being moved, and possible permanent

loss of business customers, all as a consequence of displacement.

24. This tax incentive was part of a $281,000,000 taxpayer subsidy package which induced DaimlerChrysler to locate its facilities in Toledo, rather than at an alternative site which, upon information and belief, was to be located within the State of Michigan. If the facilities had instead been located in Michigan, such location would have provided economic opportunities, in the form of jobs and/or certain tax revenues to the benefit of certain local governments and the state of Michigan, from which the Michigan Plaintiffs would have benefitted. The Michigan Plaintiffs are directly injured by Toledo's subsidies to DaimlerChrysler.

25. Under the provisions of § 5709.62, the subsidy provided by Toledo is only available if a business enterprise agrees to locate new or expanded facilities and employment opportunities in specified locations within Ohio. The purpose and effect of § 5709.62 and of the Agreement is to induce DaimlerChrysler and other business enterprises to locate their economic activities in Ohio, rather than elsewhere, by conditioning favorable tax treatment on an enterprise's agreement concerning the location of investment and jobs. In so doing, the statute and Development Agreement discriminate in favor of in-state business activity and investment and against out-of-state activity and investment, in violation of the restrictions imposed on discriminatory state and local taxation by the Commerce Clause of Article 1, § 8 of the U.S. Constitution.

26. Plaintiffs state that one, some or all Defendants, or their predecessors in office, did individually and/or in concert with one another deprive Plaintiffs of the rights afforded them by Art. 1, § 8 of the U.S. Constitution (the "Commerce Clause"), while acting under color of state law, specifically §§ 5709.62 and 5709.631, all in violation of 42 U.S.C. § 1983.

27. Plaintiffs have demonstrated their entitlements to the issuance of a declaratory judgment in their favor which finds and declares the unconstitutionality of the property tax exemptions authorized by § 5709.62, and preliminary and permanent injunctions which invalidate those portions of the Agreement purporting to provide such tax exemptions to DaimlerChrysler.

WHEREFORE, as to Count 1 of the Complaint, Plaintiffs pray the Court find and declare O.R.C. §§ 5709.62 and 5709.631 to be unconstitutional. By way of relief, Plaintiffs pray the Court grant them preliminary and permanent injunctions against the enforcement of the statute(s), together with attorney fees, costs and such other and further relief as the Court may deem necessary and proper, at law and in equity.

Count 2
(Unconstitutionally of O.R.C. § 5709.62 as an Unlawful Exemption)

28. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 27.

29. O.R.C. § 5709.62 is unconstitutional as applied here in that the tax exemption granted to DaimlerChrysler is not an exemption for "public property used exclusively for any public purpose," nor does the aforesaid tax exemption fit any other classification enumerated in Ohio Const. Art. XII, § 2. Rather, the exemption is being granted to privately-owned property in the furtherance of a private business enterprise and private profits to be derived from said enterprise.

30. By its effect, O.R.C. § 5709.62 imposes an unlegislated and disproportionate tax burden upon the Ohio Plaintiffs, predicated upon Plaintiffs' status as nonbeneficiaries under the statute. Thus the implementation of the tax exemption in favor of DaimlerChrysler as alleged is violative of Plaintiffs' right to the equal protection of the laws as guaranteed to them by Art. I, § 2 of the Ohio Constitution.

31. Plaintiffs have demonstrated their entitlements to the issuance of a declaratory judgment in their favor which finds and declares the unconstitutionality of the property tax exemptions authorized by § 5709.62, and preliminary and permanent injunctions which invalidate those portions of the Agreement purporting to provide such tax exemptions to DaimlerChrysler.

WHEREFORE, as to Count 2 of the Complaint, Plaintiffs pray the Court find and declare O.R.C. §§ 5709.62 and 5709.631 to be unconstitutional. By way of relief, Plaintiffs pray the Court grant them preliminary and permanent injunctions against the enforcement of the statute(s), together with attorney fees, costs and such other and further relief as the Court may deem necessary and proper, at law and in equity.

Count 3
(Tax Exemption Not for a Project Which Retains Employment)

32. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 31.

33. DaimlerChrysler and the City of Toledo promised the public in the Development Agreement that there would be at least 4,900 permanent, full-time jobs retained as a result of the Jeep project. The final, formal tax exemption agreement, however, refers to the creation only of 4,200 permanent, full-time jobs. As of June 1997, the two Jeep plants in Toledo employed more than 5,300 hourly, permanent, full-time workers. Upon information and belief, however, there may actually be fewer than 4,200 permanent, full-time jobs retained by the Jeep project.

34. One, some or all Defendants have violated O.R.C. § 5709.62 in that a condition of granting of the aforesaid personal property tax exemption to DaimlerChrysler is that the Jeep Plant project "hire new employees, or preserve employment opportunities for existing employees." Plaintiffs

state that the statute requires at least the numbers of jobs to be preserved that existed at the time the exemption was granted or was to go into effect. However, the Jeep Plant project is projected to employ fewer people when it is completed than DaimlerChrysler's two Jeep-related plants in Toledo employed prior to execution of the Development Agreement and/or the effective date of the personal property tax exemption.

35. Plaintiffs have demonstrated their entitlements to the issuance of a declaratory judgment in their favor which finds and declares the nonconformity of the property tax exemptions authorized by the Development Agreement with the legislated requirements of § 5709.62, and preliminary and permanent injunctions which invalidate those portions of the Agreement purporting to provide such tax exemptions to DaimlerChrysler.

WHEREFORE, as to Count 3 of the Complaint, Plaintiffs pray the Court find and declare that one, some or all Defendants have violated the job creation requirement of O.R.C. § 5709.62. By way of relief, Plaintiffs pray the Court grant them preliminary and permanent injunctions against the allowance of the tax exemptions, together with attorney fees, costs and such other and further relief as the Court may deem necessary and proper, at law and in equity.

Count 4
(Unconstitutionality of Investment Tax Credit)

36. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 35.

37. O.R.C. § 5733.33 (copy attached as Exh. D) establishes a credit against the Ohio corporation franchise tax for purchases of qualifying new manufacturing machinery and equipment which is installed in the state of Ohio. If the machinery and equipment are located in an area within Ohio receiving a distress designation from the Ohio Department of

Development, the credit amount equals thirteen and one-half percent (13 1/2%) of the cost of qualifying machinery and equipment.

38. Section 6.07 of the Development Agreement between the City of Toledo and DaimlerChrysler stipulates that the receipt by DaimlerChrysler of certain "grants, awards, and incentives set forth in Exhibit 6.07" shall be a condition precedent to the performance of DaimlerChrysler's obligations under the Agreement. Among the incentives listed in Exhibit 6.07 is a 13 1/2% percent corporate franchise tax credit on eligible investments made in connection with the Jeep Plant Project, based on the City of Toledo's receipt of a distress designation for purposes of the Project from the Ohio Department of Development. Such credit is authorized by the provisions of § 5733.33.

39. By means of § 5733.33, the State of Ohio has provided DaimlerChrysler with a subsidy of many millions of dollars in foregone tax revenues in order to induce DaimlerChrysler to locate new manufacturing machinery and equipment at its facilities in Toledo.

40. The Ohio Plaintiffs are injured by this scheme in that the subsidy depletes the funds of the State of Ohio to which the Plaintiffs contribute through their tax payments, thereby diminishing the total funds available for lawful uses and imposing disproportionate burdens on the Ohio Plaintiffs.

41. Further, Plaintiff Kim's Auto and Truck Service, Inc.'s business property on Stickney Avenue in Toledo as of the filing of this Complaint is slated to be condemned by the City of Toledo, to be taken and conveyed to DaimlerChrysler in aid of the Jeep plant project. Without the aforesaid investment tax credit, the Stickney Avenue Jeep plant would not have been expanded, causing Kim's Auto to be slated for displacement. Kim's will be injured by the displacement in that the business has in the past and will into the future experience temporary shutdowns, lack of customer access from

public thoroughfares, loss of current location as a factor in customer decisions, temporary and/or permanent loss of business visibility, loss of income from temporary closure due to being moved, and possible permanent loss of business customers, all as a consequence of displacement.

42. This tax incentive was part of a $281,000,000 taxpayer subsidy package which induced DaimlerChrysler to continue to operate its plants in Toledo, rather than at an alternative site which, upon information and belief, was to be located within the State of Michigan. If the plant or plants had instead been located in Michigan, they would have provided economic opportunities, in the form of jobs and/or certain tax revenues to the benefit of certain local governments and the State of Michigan, from which the Michigan Plaintiffs would have benefitted. The Michigan Plaintiffs were thus directly injured by Ohio's subsidies to DaimlerChrysler.

43. Under the provisions of § 5733.33, the subsidies provided DaimlerChrysler by Ohio are only available with respect to manufacturing machinery and equipment placed in service within Ohio. The purpose and effect of § 5733.33 is to induce DaimlerChrysler and other business corporations to locate their economic activities in Ohio, rather than elsewhere, by conditioning favorable tax treatment on the corporations' decisions to place new machinery and equipment in Ohio and not elsewhere. Moreover, by providing a credit against the corporate franchise tax measured exclusively by new machinery and equipment placed in service in Ohio, § 5733.33 confers preferential tax treatment on instate businesses. In so doing, the statute discriminates in favor of in-state business activity and against out-of-state activity, in violation of the restrictions imposed on discriminatory state taxation by the Commerce Clause of Art. I, § 8 of the U.S. Constitution.

44. Plaintiffs state that one, some or all Defendants, or their predecessors in office, did individually or in concert

with one another deprive Plaintiffs of the rights afforded them by Art. 1, § 8 of the U.S. Constitution, while acting under color of state law, specifically § 5733.33, in violation of 42 U.S.C. § 1983.

45. Plaintiffs have demonstrated their entitlements to the issuance of a declaratory judgment in their favor which finds and declares the unconstitutionality of the investment tax credits authorized by § 5733.33, and to preliminary and permanent injunctions which invalidate those portions of the Agreement purporting to provide such tax exemptions to DaimlerChrysler.

WHEREFORE, as to Count 4 of the Complaint, Plaintiffs pray the Court find and declare O.R.C. § 5733.33 to be unconstitutional and violative of the U.S. Constitution, and by way of relief, grant them preliminary and permanent injunctions against the operation of said statute, together with attorney fees, costs and such other and further relief as the Court may deem necessary and proper, at law and in equity.

Count 5
(Unconstitutionality of O.R.C. § 5733.33 as unlawful tax relief)

46. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 45.

47. By its effect, O.R.C. § 5733.33 imposes an unlegislated and disproportionate tax burden upon the Ohio Plaintiffs, predicated upon Plaintiffs' status as nonbeneficiaries under the statute. Thus the implementation of the corporate franchise tax credit to DaimlerChrysler as alleged is violative of Plaintiffs' right to the equal protection of the laws as guaranteed to them by Art. I, § 2 of the Ohio Constitution.

48. Plaintiffs have demonstrated their entitlements to the issuance of a declaratory judgment in their favor which finds and declares the unconstitutionality of the investment tax credits authorized by § 5733.33, and to preliminary and per-

manent injunctions which invalidate those portions of the Agreement purporting to provide such tax exemptions to DaimlerChrysler.

WHEREFORE, as to Count 5 of the Complaint, Plaintiffs pray the Court find and declare O.R.C. § 5733.33 to be unconstitutional and violative of the Ohio Constitution, and by way of relief, grant them preliminary and permanent injunctions against the operation of said statute, together with attorney fees, costs and such other and further relief as the Court may deem necessary and proper, at law and in equity.

/s/
Terry J. Lodge (0029271)

Peter D. Enrich
Co-counsel for Plaintiffs

[EXHIBIT A TO COMPLAINT]

AGREEMENT
FOR THE
DEVELOPMENT OF
STICKNEY ASSEMBLY PLANT

BETWEEN

CHRYSLER CORPORATION,

AND

THE CITY OF TOLEDO

Dated as of

November 12th, 1998

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AGREEMENT FOR THE DEVELOPMENT OF THE STICKNEY AVENUE ASSEMBLY PLANT

THIS AGREEMENT FOR THE DEVELOPMENT OF THE STICKNEY AVENUE ASSEMBLY PLANT (this "AGREEMENT") is made and entered into as of November 12th, 1998, between CHRYSLER CORPORATION, a Delaware corporation (hereinafter sometimes referred to as "CHRYSLER"); and the CITY OF TOLEDO, an Ohio municipal corporation, hereinafter sometimes referred to as the "CITY".

RECITALS

A. WHEREAS, CHRYSLER owns real property located within the City of Toledo, Ohio, and facilities located thereon, commonly known as the "Jeep Parkway Assembly Plant" and "Stickney Avenue Assembly Plant"; and

B. WHEREAS, CHRYSLER and the CITY mutually desire to have Chrysler undertake improvements to the Jeep Parkway Assembly Plant and expansion and construction of the Stickney Avenue Assembly Plant (hereinafter sometimes referred to as the "Project"); and

C. WHEREAS, the Project will involve, among other things, the acquisition by the CITY and subsequent conveyance to CHRYSLER of certain real property (the "Property") adjacent to the Stickney Avenue Assembly Plant (which Property along with the Stickney Avenue Assembly Plant are hereinafter sometimes referred to as the "Project Site"); and

D. WHEREAS, for the purpose of carrying out the Stickney Urban Renewal Plan for the purpose of elimination of blight and to obtain redevelopment to prevent recurrence of blight, and for the purpose of creation and preservation of jobs and employment opportunities and improving the economic welfare of the people, the CITY has determined to develop the Property; and

E. WHEREAS, the CITY believes that the redevelopment of the Property with the Project pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the CITY and the health, safety, morals, and welfare of its residents, and necessary for the purposes of carrying out the Stickney Urban Renewal Plan, elimination of blight and recurrence of blight and for the creation and preservation of jobs and employment opportunities; and to improve the economic welfare of the people of the CITY; and

F. WHEREAS, in order to induce CHRYSLER to undertake the Project, the CITY has agreed to make available to CHRYSLER certain grants and other economic incentives and to undertake various Project related activities, including: (1) relocation from the Property of residents, businesses, nonprofit organizations and utility facilities; (2) demolition of existing structures above and below grade on the Property; (3) environmental remediation and site preparation of the Property; (4) provision of transportation, utility and other infrastructure facilities and improvements; and (5) partition of the Property into four (4) separate parcels.

NOW, THEREFORE, in consideration of the warranties, representations, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and CHRYSLER agree as follows:

ARTICLE I

CONVEYANCE OF PROPERTY

1.01 Conveyance of Property. The Property (as more fully described in Exhibit 1.01) shall be partitioned by the CITY into separate parcels as generally described and identified in Exhibit 1.01 and more specifically described pursuant to the Surveys to be furnished in accordance with Section 4.03 (each such parcel sometimes referred to hereinafter as a

"Parcel"). Subject to the terms and conditions hereof, and in consideration of CHRYSLER undertaking the Project, the CITY will convey each Parcel to CHRYSLER and CHRYSLER shall receive each Parcel from the CITY in a series of transactions (hereinafter sometimes referred to individually as the "Transaction" and collectively as the "Transactions") for which the Closings shall occur not later than the dates set forth in the following schedule:

Parcel Number	Not Later Than
I	January 1, 1999
II and III	April 1, 1999
IV	January 1, 2000

The City covenants and agrees to use its best efforts to fulfill all of the terms and conditions necessary to close the Transactions as soon as reasonably possible in advance of the foregoing schedule.

1.02 Delivery of Property. At each applicable Closing for each Transaction, the CITY shall deliver to CHRYSLER:

(a) An executed and transferable, recordable corporation Warranty Deed (the "Deed") conveying to CHRYSLER marketable title to the Parcel in fee simple, free from all defects, covenants, encroachments, and any other encumbrances, except those easements, restrictions of record, and taxes due and payable after Closing which constitute Permitted Exceptions as hereinafter defined in Section 4.02 and such other matters as may be waived by CHRYSLER;

(b) Such other instrument(s) of conveyance, transfer, assignment or authorization as CHRYSLER may reasonably request;

(c) An owners' affidavit with respect to the Parcel or other similar instrument in a form satisfactory to CHRYS-

LER and Lawyer's Title Insurance Company (the "Title Insurance Company"); and

(d) All information within the CITY'S possession required for reporting purposes to the Internal Revenue Service or any other governmental agencies in connection with the Transaction.

The CITY and CHRYSLER shall each approve and sign closing statements reflecting each Transaction.

1.03 Closing. Each Parcel will be conveyed, and accepted, at a separate closing (each a "Closing"). Each Closing shall occur at such place and on such date and time, subject to the conveyance schedule set forth in Section 1.01, as the CITY and CHRYSLER shall agree (each such date a "Closing Date").

1.04 Proration of Expenses. All costs and expenses with respect to the ownership, occupancy and use of a Parcel prior to an applicable Closing shall be borne by the CITY and after the Closing shall be borne by CHRYSLER; provided, however, that any costs (including public utility charges and fees) incurred by CHRYSLER prior to such Closing in connection with the conduct of its activities shall be borne by CHRYSLER. As to each Parcel, the CITY shall pay all real estate taxes and assessments which are due and payable before each applicable Closing. Any real estate taxes and assessments which become due and payable after an applicable Closing shall be prorated between the parties with the CITY responsible for all such taxes for the period from the last due and payable date up to and including the Closing Date. The CITY shall pay all transfer and conveyance taxes and recording fees by reason of the conveyances contemplated by this AGREEMENT.

1.05 Access to Property. Upon the earlier of the CITY obtaining access or title to any portion of the Property (and in all events, not later than the dates indicated for the portions

of the Property set forth on Exhibit 1.05(1)), the CITY shall provide CHRYSLER and its representatives full access to such portion of the Property, along with any and all books, contracts, data, documents and records of the CITY, with respect to the Property (it being understood that, notwithstanding any such access, investigation or additional information, the CITY shall not be relieved of any of the warranties, representations, covenants or agreements of the CITY, set forth in this AGREEMENT). Such access shall be provided pursuant to, and be conditioned upon, the terms and conditions of the Right of Entry Agreement set forth in Exhibit 1.05(2). As a result of such access and the Right of Entry Agreement, CHRYSLER shall be permitted to conduct such activities as it deems necessary in its sole discretion to construct the Project and determine compliance with the covenants and agreements of the CITY contained herein and to undertake the Project.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE CITY

The CITY represents and warrants to CHRYSLER (giving effect to consummation of each of the Transactions contemplated by this AGREEMENT) as follows:

2.01 Organization and Powers. The CITY is a public body corporate duly organized, validly existing and in good standing under the laws of the state of Ohio. The CITY has all requisite corporate power and authority to enter into this AGREEMENT and the CITY has all requisite corporate power and authority to own the Property and to carry out and perform all of its covenants and agreements contained herein.

2.02 Authorization. The execution, delivery and performance of this AGREEMENT by the CITY has been duly authorized by all necessary action, pursuant to Ordinance No. 907-98 passed by the City Council for the CITY on July 14,

1998, and approved by the Mayor of the CITY on July 16, 1998.

2.03 No Conflict. The execution, delivery and performance by the CITY of this AGREEMENT and consummation of the Transactions contemplated hereby do not and will not: (i) violate any provisions of law applicable to it or its charter, ordinances, or any order, judgment or decree of any court or other agency of government binding on it; (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any of its Contractual Obligations; (iii) result in or require the creation or imposition of any Lien upon any of its properties or assets; or (iv) require any notice to or approval or consent of any Person under any of its Contractual Obligations, except for such approvals or consents as have been obtained and disclosed in writing to CHRYSLER or except where the failure to give such notice or to obtain such approval or consent will not have an Adverse Effect on it or on its ability to consummate the Transactions contemplated by this AGREEMENT or on the ability of CHRYSLER to own the Property and undertake the Project as contemplated herein.

2.04 Governmental Consents. Except as set forth in Exhibit 2.04, the execution, delivery and performance by the CITY of this AGREEMENT and consummation of the Transactions contemplated hereby do not and will not require any registration with, consent or approval of or notice to, or other action to, with or by, any federal, state or other governmental authority, judicial or regulatory body.

2.05 Binding Obligation. This AGREEMENT, when executed and delivered by the parties, will be a legally valid and binding obligation of the CITY, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

2.06 Title to Property; Liens.

(a) Subject to Permitted Exceptions, the CITY shall have as of each applicable Closing Date good, sufficient and marketable title to the Parcel.

(b) Exhibit 1.01 shall contain a true and complete legal description of each of the Parcels. As of each applicable Closing Date, the CITY shall have exclusive possession (other than Permitted Exceptions) of the Parcel and all buildings and improvements, if any, located thereon.

(c) With respect to a Parcel as of the applicable Closing Date: (i) there shall be no allegations, notices, suits or judgments relating to violations with respect to the Parcel or improvements located thereon of any building, zoning or land use codes, regulations, ordinances and restrictions; (ii) there shall be no challenges or appeals pending which involve the amount or payment of real estate taxes or assessed valuations for the Parcel or any portion thereof, and no special arrangement or agreement shall exist between the CITY, or either of them, and any governmental authority with respect thereto; (iii) there shall be no tax assessment pending or known to be threatened with respect to the Parcel or any portion thereof; and (iv) no labor, material or services shall have been furnished in, on or about the Parcel, or any portion thereof, as a result of which any mechanics', laborers' or materialmen's liens or claims thereof might arise. Except as set forth in Exhibit 2.06(c), the CITY is not aware of anything which would materially interfere with or materially impair the intended use by CHRYSLER of any portion of the Property.

2.07 Broker's Fees. No broker's or finder's fee or commission will be payable by the CITY with respect to the Transactions contemplated by this AGREEMENT. No other similar fees or commissions will be payable by the CITY for any other services rendered to the CITY, or either of them,

ancillary to the Transactions contemplated by this AGREEMENT.

2.08 Disclosure. No representation or warranty of the CITY contained in this AGREEMENT or any other document, certificate or written statement furnished or to be furnished to CHRYSLER, and required by this AGREEMENT, by or on behalf of the CITY for use in connection with the consummation of the Transactions contemplated by this AGREEMENT contained, contains or will contain any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made.

2.09 Compliance with Laws. The performance by the CITY of all obligations, covenants, commitments and undertakings of the CITY pursuant to this AGREEMENT is not, and will not be, in violation of any law, ordinance, rule, regulation, order, policy, guideline or other requirement of any domestic or foreign government, or any instrumentality or agency thereof, having jurisdiction over the Property or the Project.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF CHRYSLER

CHRYSLER represents and warrants to the CITY as follows:

3.01 Organization and Powers. Chrysler is a Delaware corporation duly authorized to conduct business in the State of Ohio. Chrysler has all requisite corporate power and authority to enter into this AGREEMENT and to carry out and perform all of its covenants and agreements contained herein.

3.02 No Conflict. The execution, delivery and performance by CHRYSLER of this AGREEMENT and consumma-

tion of the Transactions contemplated hereby and thereby do not and will not: (i) violate any provisions of law applicable to it; (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any of its Contractual Obligations; (iii) result in or require the creation or imposition of any Lien upon any of its properties or assets; or (iv) require any approval or consent of any Person under any of its Contractual Obligations, except for such approvals or consents as have been obtained and disclosed in writing to the CITY.

3.03 Binding Obligation. This AGREEMENT, when executed and delivered by the parties, will be a legally valid and binding obligation of CHRYSLER, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

3.04 Broker's Fee. No broker's or finder's fee or commission will be payable by CHRYSLER with respect to any of the Transactions contemplated by this AGREEMENT. No other similar fees or commissions will be payable by CHRYSLER for any other services rendered to it ancillary to the Transactions contemplated by this AGREEMENT.

3.05 Disclosure. No representation or warranty made by CHRYSLER contained in this AGREEMENT or any certificate or any written statement furnished or to be furnished to the CITY, and required by this AGREEMENT, by or on behalf of CHRYSLER for use in connection with the consummation of the Transactions contemplated by this AGREEMENT contained, contains or will contain any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made.

3.06 Compliance with Laws. The performance by CHRYSLER of all obligations, covenants, commitments and undertakings of CHRYSLER pursuant to this AGREEMENT is not, and will not be, in violation of any law, ordinance, rule, regulation, order, policy, guideline or other requirement of any domestic or foreign government, or any instrumentality or agency thereof, having jurisdiction over the Property or the Project.

ARTICLE IV

COVENANTS OF THE CITY

The CITY covenants to CHRYSLER as follows:

4.01 Acquisition of Property.

The CITY shall acquire good, sufficient and marketable title to the Property as contemplated by Section 2.06(a), so as to convey each Parcel to CHRYSLER in accordance with the schedule set forth in Section 1.01.

4.02 Title Insurance. Not less than forty-five (45) days (or, as to Parcel I not later than November 15, 1998) prior to the Closing Date on which a conveyance of a Parcel is to occur at a Closing, the CITY shall furnish to CHRYSLER a commitment to issue to CHRYSLER an owner's policy of title insurance with respect to the Parcels to be conveyed at a Closing on the Closing Date, which commitment shall be issued by the Title Insurance Company (each such commitment being herein referred to as a "Title Insurance Commitment"). The Title Insurance Commitment shall set forth the state of title to the Parcel together with all exceptions, conditions and reservations to such title, including all liens, easements, restrictions, rights-of-way, covenants, consents and other encumbrances affecting the Parcel and which would appear in an owner's policy of title insurance. The Title Insurance Commitment shall contain the express commitment and requirements of the Title Insurance Company to issue an owner's policy of title insurance (each such policy being

hereinafter referred to as a "Title Insurance Policy") to CHRYSLER in an amount equal to the total consideration paid by the CITY for the Parcel and insuring title to the Parcel free and clear of exceptions, conditions or reservations to title to the Parcel except for Permitted Exceptions as defined below. At such time as the CITY shall deliver a Title Insurance Commitment to CHRYSLER, the CITY shall further cause to be furnished to CHRYSLER true, correct and legible copies of all instruments referred to in the Title Insurance Commitment as exceptions, conditions or reservations to title to the Parcel. CHRYSLER shall have a period of twenty (20) days after its receipt of the Title Insurance Commitment, including copies of the instruments referred to therein as exceptions, conditions or reservations to title to the Parcel, whichever shall last occur, to review such items and to give notice to the CITY of such objections as CHRYSLER may have to any items set forth in the Title Insurance Commitment and the CITY shall within twenty (20) days from the date of receipt of such notice from CHRYSLER correct the objections or have the Title Insurance Company issue its special endorsement insuring against damage caused by such objections in form satisfactory to CHRYSLER in its sole and absolute discretion, and provide evidence thereof to CHRYSLER. The Title Insurance Commitment shall: (a) have no survey exceptions except as to matters disclosed by the related Survey and not objected to by CHRYSLER; (b) have any exception to taxes and special assessments either deleted or limited to taxes and special assessments not due and payable as of the Closing and which are to be prorated at Closing; (c) have any exceptions as to rights of parties in possession expressly deleted; (d) have any exception to easements not shown by public records either deleted or limited to such matters or conditions as are shown on the related Survey; (e) have any exception as to construction liens deleted; (f) have no restrictions or covenants which would in CHRYSLER's sole judgment impair in any way the contem-

plated Project; (g) commit to insure good, marketable, fee-simple title to the Parcel to CHRYSLER, subject only to the exceptions and Surveys Defects to which CHRYSLER shall not object or, alternatively, expressly elect to accept (collectively "Permitted Exceptions"). Thereafter, the CITY shall deliver to CHRYSLER the applicable Title Insurance Commitment updated to a date not less than five (5) days prior to the Closing Date. The CITY shall pay all costs and premiums charged by the Title Insurance Company for the issuance of the Title Insurance Commitment and Title Insurance Policy.

4.03 Survey. Not less than sixty (60) days (or, as to Parcel I, not later than November 15, 1998) prior to the Closing Date on which a conveyance of a Parcel is to occur at a Closing, the CITY shall furnish to CHRYSLER, at the CITY's sole cost and expense, a current ALTA/ACSM as-built plat of survey of the Parcel prepared by a licensed Ohio surveyor (each such survey being hereinafter referred to as a "Survey"). The Survey shall be dated on or after the date hereof, shall bear the surveyor's certification to CHRYSLER, its nominee taking title to the Parcel, if any, its lenders, if any (if known at that time, but added when known or ascertained by CHRYSLER), and the Title Insurance Company, that the Survey was prepared, in accordance with ALTA "Minimum Standard Detail Requirements" and shall show (i) whether any portion of the Parcel is located within a defined flood hazard area or flood plain and, if not, the surveyor shall certify that no portion of the Parcel is located within a defined flood hazard area or flood plain, (ii) all improvements, easements, building lines, curb cuts, parking areas, sewage, water, electricity, gas and other utility facilities (together with recording and/or other information concerning the creation of any such easements, building lines, sewage, water, electricity, gas or other utility facilities), roads and means of physical and record ingress and egress to and from the Parcel by public roads or otherwise and (iii) the gross acreage of the Parcel. The legal description contained in the Survey shall be

used for all purposes hereunder. The Survey shall contain the following certification:

> "This is to certify that this map or plat and the survey on which it is based were made (i) in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and ACSM in 1992, and (ii) pursuant to the Accuracy Standards (as adopted by ALTA and ACSM and in effect on the date of this certification) of an Urban Survey."

If the Survey shall shown any encroachments onto the Parcel from any adjacent property, any encroachments by or from the Parcel onto any adjacent property or any violations of any building lines, restrictions or easements affecting the Parcel, or any portion of the Parcel is within a defined flood hazard area or flood plain, or any matter which is not a Permitted Exception hereunder, or if the location of any easement encumbering the Parcel affects the marketability thereof in CHRYSLER's sole and absolute discretion, provided such determination is made in good faith) (collectively "Survey Defects"), CHRYSLER shall give written notice thereof to the CITY within twenty (20) days after receipt of the Survey and the CITY shall within twenty (20) days from the date of receipt of such notice from CHRYSLER, correct the Survey Defects or, at CHRYSLER's election, have the Title Insurance Company issue its special endorsement insuring against damage caused by such Survey Defects (other than any defect based on the location of an easement which affects marketability, which defects must be corrected to the reasonable satisfaction of CHRYSLER) in form satisfactory to CHRYSLER in its sole and absolute discretion, and provide evidence thereof to CHRYSLER If the CITY fails to have such Survey Defects corrected or insured against as provided in this Section 4.03, within such twenty (20)-day

period, CHRYSLER may elect, within five (5) days following the expiration of such period, to (i) terminate this AGREEMENT, or (ii) waive such defect(s) by accepting title to the Parcel subject to such Survey Defects.

4.04 Property Tax Abatement. A 100% exemption from personal property tax for personal property used by CHRYSLER at the Project Site shall be provided for a period of 10 years, as set forth in agreements between CHRYSLER, the CITY, and the Toledo City and Washington Local Schools, the forms of which are attached as Exhibit 4.04.

4.05 Site Preparation. Prior to the applicable Closing Date with respect to the Property and before the final Closing Date with respect to the Project Site, the CITY shall complete or cause to be completed at the CITY'S cost and expense the following site preparation activities:

(a) Vacation of the Property. The CITY shall cause the vacation of all streets, alleys and rights of way, along with all persons occupying or claiming rights to occupy the Property, so that CHRYSLER has exclusive possession of the Parcel, subject to the Permitted Exceptions.

(b) Demolition. All existing improvements above or below existing grade elevations, including streets, curbs, sidewalks, driveways, parking lots, floor slabs, basements, pit walls and floors, underground storage tanks, truck walls, man holes, catch basins, piping, building components, paved surfaces and all other improvements to the Property shall be demolished, removed, excavated and backfilled, by the CITY in accordance with the specifications set forth in Exhibit 4.05(b).

(c) Removal of Debris. All non-soil material, rubble and debris resulting from demolition of improvements or which is otherwise on the Project Site as a result of the site preparation activities described in this section 4.05, shall be

removed and disposed of by the CITY in accordance with all applicable federal, state and local laws.

(d) Clearing, Grubbing and Stripping. All organic materials on the Property shall be cleared, stripped and removed by the CITY. In order to expedite necessary site preparation for construction of the Project by CHRYSLER, the CITY shall clear and grub all organic material excluding topsoil located on the Stickney Avenue Assembly Plant property.

(e) Remediation.

(1) As of the Access Date for each Parcel as set forth in Exhibit 1.05(1) (except as to Parcel I, in which case not later than 30 days after such Access Date), such Parcel shall be investigated and remediated by the City in accordance with the Protocols and Procedures set forth in Exhibit 4.05(e). Upon completion of remediation as required herein of a Parcel, as soon thereafter as reasonably possible, the CITY shall furnish CHRYSLER with a Final Report for such Parcel that includes the following information:

a. Description of the scope of the investigation, including a description of prior uses of the Parcel and the rationale for sampling locations;

b. Description of all remedial activities, together with verification that the remediation work was performed to the standards required herein;

c. Confirmation sample results and, if applicable, any continuing remedial activity in adjacent Property that is attributable to contamination on the Parcel being investigated and remediated; and

d. Any "No Further Action" letters, covenants or other correspondence related to the environmental condition of the Parcel.

(2) Prior to any backfilling, CHRYSLER may, at its sole discretion, inspect the Parcel, request additional information, and accept or reject the CITY's Final Report with any such rejection constituting an Event of Default as that term is defined herein. Any acceptance by CHRYSLER of a Parcel shall not constitute a waiver of CHRYSLER's rights or the CITY's obligations to remediate the Property, including the groundwater, as required herein.

(3) For purposes of this Section 4.05(e), the individuals to whom any Amendments to this Section 4.05(e) or Final Report (or comments thereon) should be sent are:

On behalf of the CITY	On behalf of CHRYSLER
Casey Stevens	Greg Rose
Project Manager	Manager, Site
Environmental Services	Remediation
Division	800 Chrysler Drive
348 S. Erie Street	CIMS 482-00-51
Toledo, Ohio 43602	Auburn Hills, MI 48326
419-936-3757	(248) 576-7362

(f) Reuse of Soil. CHRYSLER may elect to use any soil excavated by the CITY from the Property which meet the requirements of Section 4.05(e) and, if necessary, stockpile such soil at a location on the Property acceptable to both parties. To the extent CHRYSLER does not elect to use any such excavated soil, the CITY shall remove such soil from the Property for reuse or disposal in accordance with all applicable laws, regulations and ordinances. Under no circumstances shall the removal of such soil be identified with CHRYSLER's Stickney Avenue Jeep Plant RCRA identification number or attributed by manifest or otherwise to CHRYSLER as a generator.

(g) Backfilling and Grading. All basements, double basements, truck wells, manholes, catch basins, holes, pits, sewers, man-made depressions and voids, whether previously existing or created by demolition, excavation, utility removals or remediation (collectively "Voids"), shall be backfilled, dewatered and the Property shall be graded and compacted by the CITY in accordance with the specifications set forth in Exhibit 4.05(b).

(h) Wetlands. The CITY has received a permit pursuant to Section 404 of the Clean Water Act to fill in all wetlands within the Project Site. Filling of all wetlands on the Project Site shall be performed by the CITY in accordance with such permit and applicable law. All backfill material used by the CITY to fill any wetlands shall meet standards which are equal to or greater than those set forth in Exhibit 4.05(b) as well as the requirements of the permit.

(i) Utility Infrastructure Improvements and Services.

(1) Subject to the specifications set forth in Exhibit 4.05(b) and except as otherwise provided in Exhibit 4.05(i), the CITY shall cause without cost to or claim of contribution by third parties from CHRYSLER, the appropriate CITY-provided utility services to deactivate, remove and/or relocate all utility buildings, service facilities and similar equipment within the Property or the Project Site at such times as shall permit the parties to fulfill their respective obligations in this Agreement.

(2) The CITY shall cause to be constructed, without cost to or claim of contribution by third parties from CHRYSLER, such CITY-provided public utility infrastructure improvements, including water and sewer line extensions to the new Stickney Avenue Assembly Plant, as described by, and in accordance with the specifications set forth in Exhibit 4.05(i).

(3) The CITY shall provide certificates and such other evidence as CHRYSLER may request from each CITY-provided public utility servicing or having facilities in, the parcel or the Project Site which shall demonstrate the extension, deactivation, removal, relocation, location and capacity of all utility facilities deemed necessary by CHRYSLER for the Project.

(4) The CITY shall take such actions as are within its authority to facilitate and coordinate any of the same undertakings described in paragraphs (1), (2) and (3) of this Section 4.05(i) by public utilities other than CITY-provided utilities as are necessary to fulfill the requirements of Section 6.09.

(j) Storm Water. All construction performed by the CITY in connection with the Site Preparation Activities described in this Section 4.05 or as otherwise required pursuant to this Agreement shall be performed in accordance with the Storm Water Pollution Prevention Plan for Construction Activities Associated with the Stickney Avenue Jeep Facility Expansion dated January, 1998, as the same may be amended from time to time.

(k) Safety. In connection with all such site preparation activities, the CITY shall be responsible for taking all necessary measures to assure the safety and security of the Property and all visitors thereto, and to eliminate the presence or occurrence of any hazards, nuisances or other potential liabilities.

4.06 Road and Other Infrastructure Improvements. The CITY shall cause to be constructed, without cost to or claim of contribution by third parties from CHRYSLER, road and other infrastructure improvements in connection with the Project in accordance with the specifications set forth in Exhibit 4.06.

4.07 Cooperation. From and after the date hereof, the CITY shall use its best efforts and cooperate with CHRYSLER to secure all consents, approvals, authorizations, exemptions and waivers as are described in Article VI hereof or as shall be required in order to enable CHRYSLER to consummate the Transactions contemplated by this AGREEMENT and to undertake the Project.

4.08 Further Assurances. From and after the date hereof the CITY shall at the request of CHRYSLER execute and deliver any such further instruments or documents and take all such further action as CHRYSLER may request to evidence consummation of the Transactions contemplated by this AGREEMENT.

4.09 Post-Closing Assistance. From and after the date hereof, the CITY shall be available to CHRYSLER for consultation and assistance in connection with construction of the Project at such times and in such manner as CHRYSLER shall reasonably request.

4.10. Water Utility Rates. Commencing with the initiation of production at the new Stickney Avenue Assembly Plant and for a period of five (5) years thereafter, the water services of the CITY shall be provided to CHRYSLER at the Jeep Parkway Assembly Plant and new Stickney Avenue Assembly Plant at the rate and terms in effect for such services at the Jeep Parkway Assembly Plant as of July 26, 1997.

ARTICLE V

COVENANTS OF CHRYSLER

CHRYSLER covenants with the CITY as follows:

5.01 Project. Subject to economic conditions and productivity and technological changes, CHRYSLER will upon acquisition of the Property commence construction in 1998 of the Project. The value of the Project is presently estimated at $1.2 billion with combined employment at the Jeep Park-

way Assembly Plant and Stickney Avenue Assembly Plant currently anticipated to be approximately 4,900 CHRYSLER employees.

5.02 Cooperation. From and after the date hereof, CHRYSLER shall cooperate with the CITY to secure all consents, approvals, authorizations, exemptions and waivers as shall be required in order to enable CHRYSLER to consummate the Transactions contemplated by this AGREEMENT and to undertake the Project.

5.03 Further Assurances. From and after the date hereof, CHRYSLER shall at the request of the CITY, or either of them, execute and deliver any such further instruments or documents and take all such further action as the CITY, or either of them, may request to evidence consummation of the Transactions contemplated by this AGREEMENT.

5.04 Access To Stickney Avenue Assembly Plant. From and after the date hereof until completion of the CITY's responsibilities in Section 4.05, CHRYSLER shall provide the CITY and its representatives, upon prior written notification, such access to the Stickney Avenue Assembly Plant as described in Exhibit 5.04, along with any and all data, documents and records of CHRYSLER, or CHRYSLER's consultant, with respect to the Stickney Avenue Assembly Plant, as is necessary for the CITY to undertake and complete the obligations set forth in Exhibit 5.04.

5.05 Infrastructure Improvements. CHRYSLER shall convey to the CITY at no cost to the CITY, not later than January 1, 1998, such portions of the Project Site as described in Exhibit 5.05 which CHRYSLER owns and is necessary for the CITY to construct the infrastructure improvements described in Exhibit 4.06. Such conveyance shall be by warranty deed with the expenses associated with title insurance, survey or other charges incidental to the conveyance to be borne by the CITY.

ARTICLE VI

CONDITIONS PRECEDENT TO OBLIGATIONS OF CHRYSLER

The obligations of CHRYSLER to consummate the Transactions contemplated by this AGREEMENT shall be subject to the fulfillment (or waiver) at or prior to each Closing of each of the following conditions:

6.01 Accuracy of Representations Warranties, Covenants and Agreements of the SELLERS. The CITY shall have complied in all material respects with all of its covenants and agreements contained herein to be performed at or prior to the Closing, all representations and warranties of the CITY contained herein shall be true in all material respects on and as of the Closing Date with the same effect as though made on and as of such Closing Date and, except to the extent that such representations and warranties were made as of a specified date, such representations and warranties shall continue on such Closing Date to have been true in all material respects as of the specified date.

6.02 Certificate of Fulfillment. The CITY shall have delivered to CHRYSLER at the Closing a certificate in the form attached hereto as Exhibit 6.02 and incorporated herein, dated as of the Closing Date, as to the accuracy of the CITY'S representations, warranties, covenants and agreements and the fulfillment of each of the conditions set forth in Article IV and Section 6.01.

6.03 Absence of Actions or Proceedings. There shall be no actual or threatened action or proceeding by or before any court, other governmental body or arbitration tribunal which shall seek to restrain, prohibit or invalidate any of the Transactions contemplated by this AGREEMENT or which might affect the right of CHRYSLER to undertake the Project which, in the judgment of CHRYSLER made in good faith and based upon advice of its counsel, makes it inadvisable to

proceed to consummate the Transactions contemplated by this AGREEMENT.

6.04 Further Action. All consents, approvals, authorizations, exemptions and waivers that shall be required in order to enable CHRYSLER to consummate the Transactions contemplated by this AGREEMENT shall have been obtained.

6.05 Opinion of Counsel. The CITY shall have delivered to CHRYSLER an opinion of its legal counsel in the form attached hereto as Exhibit 6.05 and incorporated herein.

6.06 Approvals for Project. CHRYSLER shall have received all consents, permits, approvals, authorizations, exceptions and waivers that shall be required in order for CHRYSLER to undertake the Project, including any necessary rezoning approvals, variances, special use permits, building permits, environmental permits and consents, tax abatement certificates and any other approvals and authorizations of federal, state or local governmental bodies or agencies or third parties, including but not limited to those set forth on Exhibit 6.06.

6.07 Governmental Grants Awards and Incentive Programs. CHRYSLER shall have received the grants, awards and incentives set forth in Exhibit 6.07 from all applicable federal, state and local units of government.

6.08 Landfill Settlements. Chrysler, the State of Ohio and the City shall have entered into settlement agreements regarding landfills commonly known as "North Cove" and "Dura", the material terms of which shall comport with the "LANDFILL" provisions of Mayor Carleton Finkbeiner's July 26, 1997 letter to Chrysler Chairman Robert Eaton.

6.09 Utility Improvements. All utility improvements, including building service facilities, utility transmission facilities and similar equipment, necessary to the maintenance and operation of the Project and the Stickney Avenue Assembly

Plant, shall have been constructed and activated, in accordance with the specifications set forth in Exhibit 4.05(i).

6.10 Zoning. As of the date of Closing relating to the Parcels, the zoning classification of any such Parcel shall be M-2, Industrial District, and the proposed use of the Project Site for automotive manufacturing purposes shall be a permitted use as a matter of right under that zoning classification.

ARTICLE VII

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE CITY

The obligations of the CITY to consummate the Transactions contemplated by this Agreement shall be subject to the fulfillment (or waiver) at or prior to each Closing of each of the following conditions:

7.01 Accuracy of Representations, Warranties, Covenants and Agreements of CHRYSLER. CHRYSLER shall have complied in all material respects with all of its covenants and agreements contained herein to be performed at or prior to each Closing Date and, except as otherwise contemplated hereby, all representations and warranties of CHRYSLER contained herein shall be true in all material respects on and as of such Closing Date with the same effect as though made on and as of such Closing Date and, except to the extent that such representations and warranties were made as of a specified date, such representations and warranties shall continue on such Closing Date to have been true in all material respects as of the specified date.

7.02 No Prohibition. No statute, rule or regulation promulgated by any Person or order of any court or administrative agency shall be in effect which prohibits the CITY from consummating the Transactions contemplated by this AGREEMENT.

7.03 Opinion of Counsel. CHRYSLER shall have delivered to the CITY an opinion of its independent legal counsel, Cooper, Martin, Chojnowslci & Beck, P.C., in the form attached hereto as Exhibit 7.03 and incorporated herein.

ARTICLE VIII

INDEMNITY AND RELEASES

8.01 Reciprocal Indemnity. To the extent permitted by law, and except as otherwise provided in Section 8.02, each party agrees to indemnify, defend and hold harmless the other party, their respective affiliates and their respective shareholders, directors, officers, employees and agents from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and attorneys fees and expenses, asserted against, resulting to, imposed upon or incurred by the other party by reason of or resulting from any breach of any representation, warranty, covenant or agreement of the party contained in or made pursuant to this Agreement or the Settlement Agreement between the parties dated January 22, 1998 relating to the Dura, North Cove and Stickney Avenue Landfills.

8.02 Environmental Indemnity. From and after the date of this Agreement:

(a) The CITY will indemnify, defend and hold CHRYSLER harmless from all claims, losses, oversight costs, response costs, penalties, property damage, personal injury, or contribution claimed by any third party (including the State of Ohio or the United States) attributable to or arising from:

(1) Except as otherwise provided in subparagraph C(3) of Exhibit 4.05(e), any Environmental Condition of the Property that pre-dates transfer of title to the Property to CHRYSLER;

(2) The acts, errors or omissions of the CITY related to any Site Preparation Activities as described in this Agreement; and

(3) The CITY's past, present or future treatment, handling, disposal, release or threat of release of Hazardous Substances at or from the Project Site.

(b) CHRYSLER will indemnify, defend and hold the CITY harmless from all claims, losses, oversight costs, response costs, penalties, property damage, personal injury or contribution claimed by any third party (including the State of Ohio or the United States) attributable to or arising from:

(1) Releases of Hazardous Substances by CHRYSLER at the Project Site while CHRYSLER holds title to the affected property;

(2) Releases of Hazardous Substances by third parties at the Project Site while CHRYSLER holds title to the affected property;

(3) CHRYSLER'S past, present, or future treatment, handling, disposal, release or threat of release of Hazardous Substances taken from the Project Site; and

(4) Any Environmental Condition of that portion of Stickney Avenue Assembly Plant to be transferred to the CITY pursuant to Section 5.05 which pre-dates the transfer of title to such portion.

(c) "Hazardous Substances" means:

(1) Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act

of 1980, as revised, Public Law 96-510, 94 Stat. 2767; or

(2) Petroleum as defined in ORC 3746.01(I).

ARTICLE IX

DEFAULT BY THE CITY AND REMEDIES

9.01 Event of Default by the CITY. If the CITY shall, other than as a result of any Force Majeure, fail to comply with or perform any of the warranties, representations, covenants or agreements of the CITY contained herein, such a failure shall constitute a default by the CITY under this AGREEMENT (an "Event of Default by the CITY").

9.02 Remedies and Obligations. Upon the occurrence of any Event of Default by the CITY, CHRYSLER shall notify the CITY, which shall have thirty (30) days from the date of such notice to cure, at the City's cost, the Event of Default. Thereafter, the sole and exclusive remedy available to CHRYSLER, without any further notice to the CITY, being one or more of the following:

(a) Refrain from any further performance of its covenants and agreements contained herein until the Event of Default by the CITY shall have been cured to CHRYSLER's satisfaction; or

(b) Rescind the AGREEMENT, whereupon CHRYSLER may, but shall not be obligated to, promptly quit claim all of its right, title and interest in and to each Parcel to the CITY; or

(c) Seek damages (subject to Section 11.02); or

(d) Cure the default and seek damages (subject to Section 11.02).

ARTICLE X

DEFAULT BY CHRYSLER AND REMEDIES

10.01 Event of Default by CHRYSLER. If CHRYSLER shall, other than as a result of any Force Majeure, fail to comply with or perform any of the warranties, representations, covenants or agreements of CHRYSLER contained herein, such a failure shall constitute a default by CHRYSLER under this AGREEMENT (an "Event of Default by CHRYSLER").

10.02 Remedies and Obligations. Upon the occurrence of any Event of Default by CHRYSLER, the CITY shall notify CHRYSLER thereof with the sole and exclusive remedy available to the CITY without any further notice to CHRYSLER, being damages subject to Section 11.02.

ARTICLE XI

LIMITATION OF REMEDIES

11.01 Survival of Representations, Warranties, Covenants and Agreements. The representations, warranties, covenants and agreements of the CITY and CHRYSLER contained in this AGREEMENT shall survive the Closing without limitation as to time.

11.02 Limitation of Remedies. Except as provided in Article VIII and Subsections 9.02(a) and (b), the sole and exclusive remedy against each party by reason of any breach of any of the representations and warranties made herein or in any ancillary document or the failure to comply with any of the covenants and agreements contained herein or in any ancillary documents to be performed or complied with shall be limited to reimbursement of the direct out-of-pocket expenses and costs incurred by the party as a result of such breach or failure to comply.

ARTICLE XII

DEFINITIONS

12.01 Definitions. The following terms, as used herein, have the following respective meanings:

"Adverse Effect" means, with respect to any Person, an adverse effect upon the business, operations, properties, prospects, assets or condition (financial or otherwise) of the Person as a result of the occurrence or existence of any single event or condition or series of events or conditions in the aggregate.

"Agreement" means this Agreement for the Development of Stickney Avenue Assembly Plant, as amended, modified or supplemented from time to time in accordance with the terms hereof.

"CHRYSLER" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Closing" has the meaning assigned to such term in Section 1.03.

"Closing Date" has the meaning assigned to such term in Section 1.03.

"Contractual Obligation," as applied to any Person, means any provision of any deed of trust, contract, lease, license, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Environmental Condition" means the presence of contaminants in soil in excess of the clean up standards set forth in Exhibit 4.05(e).

"Event of Default by CHRYSLER" has the meaning assigned to such term in Section 9.01.

"Event of Default by the CITY" has the meaning assigned to such term in Section 8.01.

"Force Majeure" means, with respect to any Person, any strike, picket line, boycott effort, fire, flood, freeze, accident, war (whether or not declared), revolution, riot, insurrection, act of God, act of any governmental Person, act of any public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor or other event which is reasonably beyond the control of such Person.

"Lien" means, with respect to the Property and each Parcel, any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest).

"Stickney Avenue Assembly Plant" has the meaning assigned to such term in the recitals.

"Parcel" has the meaning assigned to such term in Section 1.01.

"Permitted Exceptions" has the meaning assigned to such term in Section 4.02.

"Person" means an individual, corporation, partnership, limited liability company, trust, organization, association, governmental body or agency or other entity.

"Project" has the meaning assigned to such term in the "Recitals".

"Property" has the meaning assigned to such term in Section 1.01.

"CITY" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Survey" has the meaning assigned to such term in Section 4.03.

"Title Insurance Company" has the meaning assigned to such term in Section 1.02(c).

"Voids" has the meaning assigned to such term in Subsection 4.05(g).

12.02 Other Definitional Provisions. References to "Articles," "Sections," "Subsections," "Clauses," and "Exhibits," if any, shall be to Articles, Sections, Subsections, Clauses, Exhibits and Exhibits, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in this Agreement, unless the context otherwise requires, may be used in the singular or the plural depending on the reference. In this Agreement, "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement as a whole and not merely to the specific Article, Section, Subsection or Clause in which the respective word appears; words importing any gender include the other genders; references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

ARTICLE XIII

MISCELLANEOUS

13.01 Expenses. CHRYSLER and the CITY shall pay all costs, fees, and expenses incurred by it or them in connection with the negotiation, review, documentation, preparation, performance, compliance with and closing of this AGREEMENT.

13.02 Exhibits. To the extent any of the Exhibits shall not have been completed at or prior to the date hereof, the CITY and CHRYSLER shall complete such Exhibits as soon as practicable after the date hereof and, (except as otherwise provided herein) in all events, not later than September 30, 1998.

13.03 Notices. Any notice, request, claim, demand or other communication to be given or delivered under or by reason of the provisions of this AGREEMENT will be in writing and will be deemed to have been given when delivered personally or mailed by certified or registered mail, return receipt requested, and postage prepaid, to the recipient. Such notices, demands and other communications will be sent as follows:

(a) If to the CITY:

City of Toledo
One Government Center
Suite 2200
Toledo, Ohio 43604
Attention: Carleton S. Finkbeiner, Mayor

With a copy to:

City of Toledo Law Department
One Government Center, Suite 2250
Toledo, Ohio 43604
Attention: Edward M. Yosses, Director

(b) If to CHRYSLER

Chrysler Corporation
CIMS 485-09-96
1000 Chrysler Drive
Auburn Hills, Michigan 48326-2766
Attention: Vice President-Government Affairs

With a copy to:

Chrysler Corporation
CIMS 485-13-32
1000 Chrysler Drive
Auburn Hills, Michigan 48326-2766
Attention: William T. McLellan, Esq.
Office of the General Counsel

or in any of the foregoing cases to such other address as such party may hereafter specify for such purpose by notice to the other parties referred to above.

13.04 Force Majeure. In the event of any delay in the performance of or compliance with any of the covenants or agreements contained herein as a result of any Force Majeure, the time for such performance or compliance shall be extended for the period of such delay.

13.05 Negotiations. The CITY and CHRYSLER have participated jointly in the negotiation, review, documentation and preparation of this AGREEMENT and, accordingly, in the event of any ambiguity or question of intent or interpretation, this AGREEMENT shall be construed as if prepared jointly by the CITY and CHRYSLER and no presumptions or burdens of proof shall arise in favor or disfavor of either the CITY or CHRYSLER by virtue of the authorship of any of the provisions hereof.

13.06 Limitation of Rights to Parties. Nothing in this AGREEMENT, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this

AGREEMENT on any persons other than the parties to it and their respective successors, legal representatives and assigns, nor is anything in this AGREEMENT intended to relieve or discharge the obligation or liability of any third persons to any party to this AGREEMENT, nor shall any provisions give any third persons any rights of subrogation or action over or against any party to this AGREEMENT.

13.07 Amendments and Waivers. Except as otherwise provided herein, any provision of this AGREEMENT may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the CITY and CHRYSLER. Except as otherwise provided in this AGREEMENT, any failure of the CITY (or CHRYSLER) to comply with any obligation, covenant, agreement or condition herein may be waived by CHRYSLER (or the CITY) only by a written instrument signed by it, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure.

13.08 Severability. Whenever possible, each provision of this AGREEMENT will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT is held to be invalid, illegal or unenforceable under any applicable law in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability in such jurisdiction, without invalidating the remainder of this AGREEMENT in such jurisdiction or any provision hereof in any other jurisdiction.

13.09 Headings. The Section and Subsection headings of the Articles of this AGREEMENT are for reference purposes only and shall not affect the meaning or interpretation of this AGREEMENT.

13.10 Counterparts; Effectiveness. This AGREEMENT and any amendments, waivers, consents or supplements may

be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This AGREEMENT shall become effective upon the execution of a counterpart hereof by the CITY and CHRYSLER.

13.11 Successors and Assigns. Except as otherwise provided herein, all of the terms and provisions of this AGREEMENT shall be binding upon, shall inure to the benefit of and shall be enforceable by the CITY and CHRYSLER and their respective successors and assigns. This Agreement may be assigned to an entity affiliated with CHRYSLER or its successor without the approval of the CITY.

13.12 Provisions Not Merged with Deed. No provision of this AGREEMENT is intended to or shall be merged by reason of any deed or conveyance instrument transferring title to the Parcels or any portion thereof from the CITY to CHRYSLER or any successor in interest, and any such deed or conveyance instrument shall not be deemed to affect or impair the provisions and covenants of this AGREEMENT.

13.13 Time of Essence. Time is of the essence of this AGREEMENT.

13.14 Entire Agreement. This AGREEMENT, including all Exhibits and other documents attached hereto or incorporated by reference herein, shall constitute the entire agreement of the CITY and CHRYSLER with respect to the subject matter hereof and supersede all other understandings, oral or written, with respect to the subject matter hereof.

13.15 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to the conflicts of law principles thereof. Jurisdiction and venue for resolution of any dispute or question of interpretation arising out of this Agreement or

the undertakings herein shall be in the Federal District Court, Northern District of Ohio.

IN WITNESS WHEREOF, the CITY and CHRYSLER have duly executed this AGREEMENT as of the date first above written.

WITNESS:

/s/

/s/

CHRYSLER CORPORATION

By: /s/
W. Frank Fountain
Its: Vice President - Government Affairs

WITNESS:

CITY OF TOLEDO

By: /s/
Carleton S. Finkbeiner
Its: Mayor

Approved as to Content:

/s/ 11/13/98
Barry Broome
Acting Director of Development

Approved as to Content:

/s/
Director, Department of Law

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLOTTE CUNO, *et al.*,	)	
Plaintiff,	)	
v.	)	Case No. 3:00CV7247
DAIMLERCHRYSLER, INC.,	)	MEMORANDUM OPINION
***et al.*,**	)	
Defendant.	)	

KATZ, J.

This matter is before Court on Plaintiffs' motion for remand (Doc. No. 12) and Plaintiffs' supplemental motion for remand (Doc. No. 18). For the following reasons, Plaintiffs' motions will be denied.

BACKGROUND

The eighteen named plaintiffs in this action are challenging the legality of approximately $280,000,000 in tax benefits that were granted to Defendant DaimlerChrysler, Inc. to induce it to remain in Toledo, Ohio. On November 12, 1998, Defendants City of Toledo, Toledo Public School District, and Washington Local School District (collectively "the municipal Defendants")[1] entered into an agreement with DaimlerChrysler whereby DaimlerChrysler received a ten-year exemption from taxes that otherwise would be levied on personal property first put into use at DaimlerChrysler's facility ("the property tax exemption"), and a credit against its state

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[1] Plaintiffs have also named Carleton L. Finkbeiner, Mayor of Toledo, as a defendant.

corporate franchise tax for certain qualifying investments ("the investment tax credit").

In Counts I and II of their amended complaint, Plaintiffs allege that the Ohio statutory scheme permitting the property tax exemption, Ohio Rev. Code §§ 5709.62(C) (1) & 5709.631, is unconstitutional because it violates the Commerce Clause of the United States Constitution and the equal protection clause of the Ohio Constitution. In Count III, Plaintiffs allege that even if Ohio Rev. Code §§ 5709.62(C) (1) & 5709.631 are constitutional, DaimlerChrysler was not qualified for the property tax exemption. In Counts IV and V of their amended complaint, Plaintiffs allege that the Ohio statutory scheme permitting the investment tax credit, Ohio Rev. Code § 5733.33, is unconstitutional because it violates the Commerce Clause of the United States Constitution and the equal protection clause of the Ohio Constitution.

Plaintiffs originally filed their complaint in the Lucas County, Ohio, Court of Common Pleas. Defendants removed the action to this Court pursuant to 28 U.S.C. § 1441, alleging federal question jurisdiction arising out of Plaintiffs' federal constitutional challenges to the statutes at issue. Plaintiffs have moved to remand the case to state court, on multiple grounds.[2] Defendants have filed opposition, Plaintiffs have replied, and Defendants have filed a surreply. The Court discusses the parties' contentions below.

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[2] The grounds for remand stated in the supplemental motion duplicate those stated in the initial motion for remand; both motions may be considered simultaneously.

DISCUSSION

A. Tax Injunction Act

The Plaintiffs claim that this Court lacks jurisdiction over this matter as a result of the Tax Injunction Act, 28 U.S.C. § 1341, and its underlying principles of comity. *See In re Gillis*, 836 F.2d 1001 (6th Cir. 1988). The Tax Injunction Act states: "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341.

The Tax Injunction Act is inapplicable here. *In Jefferson Co. v. Acker*, 527 U.S. 423, 433-34, 119 S. Ct. 2069, 2076, 144 L. Ed. 2d 408 (1999), the Supreme Court held, "By its terms, the Act bars anticipatory relief, suits to stop ('enjoin, suspend, or restrain') the collection of taxes. . . . But a suit to collect a tax is surely not brought to restrain state action, and therefore does not fit the Act's description of suits barred from federal district court adjudication." *Id.* at 433-34, 119 S. Ct. at 2076 (citations omitted). If successful, Plaintiffs' claim would invalidate both the property tax exemption and the investment tax credit, forcing the collection of those taxes. Although the Tax Injunction Act is inapplicable on its face, the analysis cannot end there.

Before dispensing with Plaintiffs' Tax Injunction Act argument, this Court must consider comity. "Although the Tax Injunction Act may not be applicable, we cannot ignore the policies underlying the Act." *Gillis*, 836 F.2d at 1005.[3] Fur-

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[3] Note that the instant case is distinguishable from *Gillis*. In *Gillis*, the Court noted that the petitioners were "not really seeking to increase the total taxes raised, but rather are saying that the sum that is being raised should be allocated differently." *Gillis*, 836

[Footnote continued on next page]

ther, "[A]bstention and stay doctrines may counsel federal courts to withhold adjudication, according priority to state courts on questions concerning the meaning and proper application of state law." *Jefferson County*, 527 U.S. at 435 n.5, 119 S.Ct. at 2077; *see also ACLU Found. of Louisiana v. Crawford*, No. CIV.A. 00-1614, 2000 WL 1273406 (E.D. La. Sept. 5, 2000). In this case, comity does not require this Court to withhold adjudication; not only would the underlying purpose of the Tax Injunction Act not be served by a refusal to adjudicate the case, but the state has expressly consented to waive considerations of comity through its motion to remove the case to this Court and through representations to that effect made within its pleadings.

The purpose of the Tax Injunction Act was "to stop out-of-state corporations from using diversity jurisdiction to gain injunctive relief against a state tax in federal court, an advantage unavailable to in-state taxpayers denied anticipatory relief under state law." *Jefferson County*, 527 U.S. at 435, 119 S. Ct. at 2077. That is not the case here. Furthermore, it is well-established that a state may waive considerations of comity in the case of the *Younger* abstention. *See Ohio Civil-Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 626, 106 S. Ct. 2718, 2722, 91 L. Ed. 2d 512 (1986); *Brown v. Hotel Employees*, 468 U.S. 491, 500, n.9, 104 S. Ct. 3179, 3185, n.9, 82 L. Ed. 2d 373 (1984) ("Since the State's Attorney General has thereby agreed to our adjudication of the controversy, considerations of comity are not implicated . . . ."); *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 479-480, 97 S. Ct. 1898, 1903-1904,

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[Footnote continued from previous page]

F.2d at 1008, n.4. Here, the Plaintiffs are attempting to increase the total taxes raised.

52 L. Ed. 2d 513 (1977). By analogy, then, the state may waive considerations of comity under the Tax Injunction Act. The Plaintiffs have advanced no compelling reason for a different result in this case. Remand pursuant to the mandates of the Tax Injunction Act would therefore be inappropriate.

B. Eleventh Amendment Immunity

The Eleventh Amendment to the Constitution acts as a general bar to suits brought in federal court against a state by a citizen of that state or another state. *See Edelman v. Jordan*, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974); *Hans v. Louisiana*, 134 U.S. 1, 10 S. Ct. 504, 33 L. Ed. 842 (1890). Plaintiffs claim that this Court lacks jurisdiction because three of their five claims request declaratory and injunctive relief directed against Ohio officials, and this relief is barred under *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). Since some claims may be barred by the Eleventh Amendment, Plaintiffs reason, all claims before the Court are barred. In support of their proposition, Plaintiffs cite *Frances J. v. Wright*, 19 F.3d 337, 340 (7th Cir. 1994). Unfortunately, Plaintiffs fail to mention that the holding in *Francis J* was *specifically abrogated* by the Supreme Court in *Wisconsin Dept. of Corr. v. Schact*, 524 U.S. 381, 118 S. Ct. 2047, 141 L. Ed. 2d 364 (1998). "A State's proper assertion of an Eleventh Amendment bar after removal means that the federal court cannot hear the barred claim. But that circumstance does not destroy removal jurisdiction over the remaining claims. . . . A federal court can proceed to hear those other claims . . . ." *Id.* at 392-93, 118 S. Ct. at 2054. No Eleventh Amendment bar to suit has yet been asserted by any of the Defendants. Therefore, the Eleventh Amendment does not eliminate this Court's removal jurisdiction in this case.

C. Standing

Plaintiffs argue that remand of this case is appropriate because all of the Plaintiffs have standing in state court,

while the standing of some Plaintiffs in federal court is more dubious. This contention by the Plaintiffs has created something of a problem for all of the litigants. Although they would like to return to state court, the Plaintiffs have not been able to bring themselves to argue that they completely lack standing in federal court; on the other hand, the Defendants have not been overly eager to argue that Plaintiffs have adequate standing to appear in this Court, no doubt because they would like to preserve the issue for later consideration. Of course, since the Defendants removed this action to federal court, the burden of proving jurisdiction, and therefore standing, is theirs. *Jerome-Duncan, Inc. v. Auto-By-Tel, L.L.C.*, 176 F.3d 904, 907 (6th Cir. 1999).

Since lack of standing would render this Court without jurisdiction, the issue must be examined closely and determined at this juncture. Among the named plaintiffs are Toledo residents, Michigan residents, non-profit and for-profit corporations in Toledo, residents whose property was taken through eminent domain to be used as part of the DaimlerChrysler Toledo plant, and an Ohio corporation characterized as being located within the boundaries of an anticipated expansion of the DaimlerChrysler Toledo plant.

There are three requirements for a litigant to have standing under Article III of the federal Constitution: injury, causation, and redressability. *See Northeastern Florida Contractors v. Jacksonville*, 508 U.S. 656, 663, 113 S. Ct. 2297, 2302, 124 L. Ed. 2d 586 (1993). The injury suffered must be personal. *See Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 471-72, 102 S. Ct. 752, 758, 70 L. Ed. 2d 700. For causation to exist, the injury must be able to be traced to the defendant's conduct. *See Northeastern Florida Contractors*, 508 U.S. at 663, 113 S. Ct. 2302. Finally, the relief from a remedy obtained by a favorable ruling must not be "too speculative." *See id.*

At the bare minimum, the Plaintiffs who are taxpayers have standing to object to the property tax exemption and franchise tax credit statutes under the "municipal taxpayer standing" rule articulated in *Massachusetts v. Mellon*, 262 U.S. 447, 43 S. Ct. 597, 67 L. Ed. 1078 (1923). "The interest of a taxpayer or a municipality in the application of its moneys is direct and immediate." *Id.* at 486, 43 S. Ct. at 601. In *Gwinn Area Cmty. Sch. v. Michigan*, 741 F.2d 840 (6th Cir. 1984), the Sixth Circuit determined that both taxpayers in and students of a school district that was being denied money by a state law had standing to bring suit, since both groups were "in positions to suffer direct and tangible injuries from the deduction. . . ." *Id.* at 844; *see also Hawley v. City of Cleveland*, 773 F.2d 736, 742 (6th Cir. 1985) ("[T]he Supreme Court continues to allow suits by nonfederal taxpayers to enjoin unconstitutional acts affecting public finances."); *United States v. City of New York*, 972 F.2d 464, 466 (2d Cir. 1992) ("[Taxpayers] have standing to challenge the legality of municipal expenditures even when there is no likelihood that resulting savings will inure to the benefit of the taxpayer.").

In their complaint, Plaintiffs allege that the property tax exemption reduces the funds available for the operation of the Toledo and Washington Local Schools. This is an injury that is fairly traceable to the application of the statutes at issue; further, a favorable decision appears likely to redress Plaintiffs' injury. These allegations are sufficiently similar to those in *Gwinn* to allow a finding, at least at this early stage in the litigation, that Plaintiffs have standing to proceed in federal court.

D. *Pullman* Abstention

Plaintiffs have asked that this Court abstain based on the doctrine of *Railroad Comm. of Texas v. Pullman Co.*, 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941). *Pullman* abstention is appropriate "when the construction of an unclear

statute would obviate the necessity for a decision on the federal constitutional question." *Heitmanis v. Austin*, 899 F.2d 521, 529 (6th Cir. 1990).

Plaintiffs have presented three situations in which they suggest unclear statutes might be construed to avoid a constitutional decision. Two of these involve Article 1, Section 2 of the Ohio Constitution, which is Ohio's guarantee of equal protection. The third involves DaimlerChrysler's compliance with O.R.C. § 5709.62, the enterprise zone statute. None of these suggest a compelling reason for abstention.

The proper interpretation of Article 1, Section 2 of the Ohio Constitution is by no means unclear or ambiguous. In fact, Ohio's equal protection clause is "substantially the same as the guarantee in that respect contained in the Fourteenth Amendment to the federal Constitution." *State ex rel. Struble v. Davis*, 132 Ohio St. 555, 560, 9 N.E.2d 684, 687 (1937). When the accepted interpretation is clear, there is no need for the district court to defer merely to allow a state court to rule first. *See Wisconsin v. Constantineau*, 400 U.S. 433, 439, 91 S. Ct. 507, 511, 27 L. Ed. 2d 515 (1971).

Plaintiffs' reliance on an unsettled interpretation of O.R.C. § 5709.62 as a vehicle for abstention is also misguided. Although interpretation of the statute may be unsettled (though Plaintiffs have offered nothing to show that this is the case), neither a finding for the Plaintiffs nor a finding against them would implicate any constitutional issues; therefore no need for a federal ruling could be obviated by a state court interpretation of the statute. *Pullman* abstention in this case is therefore inappropriate.

E. *Younger*, *Colorado River*, *Thibodaux*, and *Burford Abstention*

Plaintiffs have made passing reference to abstention based on *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483

(1976), and have requested abstention based on *Younger v. Harris*, 401 U.S. 37 (1971), 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). Argument for abstention on either basis is frivolous, since both require the existence of pending state proceedings. *See Colorado River*, 424 U.S. at 818, 96 S. Ct. at 1246-47; *Middlesex Co. Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982). Despite Plaintiffs' assertions to the contrary, there is no indication of any pending state proceeding in this case.

Plaintiffs have also made reference to abstention based on *Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. 25, 79 S. Ct. 1070, 3 L. Ed. 2d 1058 (1959). *Thibodaux* abstention is only appropriate in suits where jurisdiction is based on diversity, 28 U.S.C. § 1332. This case is not in this Court under diversity jurisdiction, and *Thibodaux* abstention is inappropriate.

Finally, Plaintiffs have invoked *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943). *Burford* involved unsettled state law and complex administrative proceedings. *Id.* at 327-28, 63 S. Ct. at 1104. There are no such circumstances here, and *Burford* abstention would be inappropriate.

CONCLUSION

Accordingly, and for the foregoing reasons, Plaintiffs' motion to remand and Plaintiffs' supplemental motion to remand are denied.

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLOTTE CUNO, *et al.*,

Plaintiff, Case No. 3:00 CV 7247

-vs- JUDGMENT ENTRY

DAIMLERCHRSLER, INC., *et al.*,

Defendant.

KATZ, J.

For the reasons stated in the Memorandum Opinion filed contemporaneously with this entry, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiffs' motion to remand (Doc. No. 12) and Plaintiff's supplemental motion to remand (Doc. No. 18) are Denied.

FURTHER ORDERED that Plaintiffs' motion to amend complaint to add a new party plaintiff (Doc. No. 25) is Granted.

/s/ David A. Katz
DAVID A. KATZ
U.S. DISTRICT JUDGE

FILED
DEC 5 - 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

12

No. 04-1724

In the Supreme Court of the United States

WILLIAM W. WILKINS,
Tax Commissioner for the State of Ohio, et al.,
Petitioners,

v.

CHARLOTTE CUNO, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether Respondents have standing to challenge Ohio's investment tax credit, Ohio Rev. Code (O.R.C.) § 5733.33.

2. Whether Ohio's investment tax credit, which seeks to encourage economic development by providing a credit to taxpayers who install new manufacturing machinery and equipment in the State, violates the Commerce Clause of the United States Constitution.

LIST OF PARTIES

The State Petitioners are two Ohio state officials: William W. Wilkins, Tax Commissioner, and Bruce Johnson, Director of the Ohio Department of Development. The Municipal Petitioners are the City of Toledo and its Mayor. The School Board Petitioners are the Toledo Public School District and the Washington Local School District. Together, the State Petitioners, Municipal Petitioners, and School Board Petitioners are referred to as "Petitioners" or "Ohio Petitioners." DaimlerChrysler Corporation is the Petitioner in the consolidated case, No. 04-1704.

The Respondents are the named plaintiffs as follows: Charlotte I. Cuno, Branwen M. Lowe, Judith A. Pfaff, Kenneth P. Pfaff, Phoenix Earth Food Co-op, Inc., Robert Scott Brundage, Herbert H. Raschke, Carol A. Raschke, Hutton Pharmacy, Inc., Duane M. Arquette, Kim's Auto and Truck Service, Inc., Mary Ebright, Helen Czapczynski, Julie Coyle, Jean E. Kaczmarek, Kathleen Hawkins, Carrie Hawkins, Jane Slaughter and Rick Van Landingham.

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